IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

MFA.No. 1095 of 2002()

OPMV.536/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR
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APPELLANT: 3RD RESPONDENT

THE ORIENTAL INSURANCE COMPANY LIMITED,
KODUNGALLOOR NOW REPRESENTED BY ITS ASSISTANT
MANAGER, REGIONAL OFFICE, METRO PALACE,
KOCHI-18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONERS
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1. P.V.MANY W/O. LATE KARUNAPPAN,
KOTTYARA HOUSE, KARIMBADAM, CHENDAMANGALAM P.O.

2. SAJITH KARUNAPPAN,
S/O. LATE KARUNAPPAN, DO. DO.

3. SIJI D/O. LATE KARUNAPPAN, DO. DO.
(NO RELIEFS ARE CLAIMED AGAINST RESPONDENTS 1 AND
2 IN THE ORIGINAL PETITION AND HENCE THEY ARE
NOT MADE PARTIES IN THIS APPEAL)

BY ADV. SRI.K.M.MOHAMMED KUNHI
SRI.A.GEORGE THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.6703 OF 2002 IN M.F.A.NO.1095 OF 2002:

DISMISSED.

Sd/-

15.11.2007 J.B.KOSHY, JUDGE

Sd/-

K.HEMA, JUDGE

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1095 OF 20O2

Dated this the 15th day of November, 2007

JUDGMENT

Koshy, J.

A 20 year old youngster died in a motor accident and his mother, brother and sister filed application for compensation contending that the accident occurred due to the negligence of the driver of the bus, insured by the third respondent Insurance Company. The driver and owner of the vehicle set ex parte and the appeal is filed after getting permission under Section 170. The bus was parked on the road and while the deceased was travelling in his scooter on 24.1.1999 from south to north along the Paravur-Chendamangalam road, scooter hit on the bus. The Tribunal found that the bus was parked against the parking rules and therefore, the bus driver was negligent. But, since there was smell of alcohol as per the postmortem certificate, 25% negligence was found on the deceased. Therefore, compensation was granted for Rs.2,37,000/-. Deducting 25% towards contributory negligence, the Tribunal awarded Rs.1,77,750/-.

2. The Insurance Company filed this appeal contending that the accident was occurred due to contributory negligence of the deceased and therefore, it has no liability to pay compensation. It is further contended that taking the age of the deceased, 18 was taken as the multiplier which is on the high side.

3. It has come out in evidence that the bus was parked without parking light and it was kept unattended. On the other side of the road, metal was stocked and the bus was parked almost on the middle of the road, without parking light. The scene mahazar would show that at the place of occurrence, road has only 6.44 mts width. On one side of the road, about 2.65 mts width and at a length of 20 mts ¼'' metals are kept. On the southern side of that portion, there were drums containing tar stored on the road and therefore, the bus was parked almost on the middle of the road as there was no space to park on the side of the road at that time. The bus should not be parked there. Therefore, parking the bus in that place, without unattended without parking light shows clear negligence of the driver of the bus. The accident occurred at the early hours at 1.20 AM. But since the smell of liquor was there on the body of the deceased, the Tribunal found that contributory negligence can be fixed as 25%. No appeal has been filed by the claimant. We are of

the view that on the facts and circumstances of the case, no interference is required on apportionment of liability and compensation for contributory negligence. Then the question is quantum of compensation awarded. His age was taken into account for fixing the multiplier. The age of the claimants also has to be looked into and deceased was unmarried. There is a case for the claimant that father of the deceased already died and he was maintaining the family and he was doing business and his monthly income was Rs.3,000/- and he was giving Rs.2,000/- as family contribution. In the absence of data, only Rs.1,750/- was fixed by the Tribunal as the monthly income. The claimant's future prospects in life etc. was not also considered. Thereafter, Rs.750/- was reduced for personal expenses and only Rs.1,000/- was fixed as monthly contribution to the family. We are of the view that on the finding that he was an earning person, Rs.1,800/- should have been taken as monthly income. Taking Rs.1,800/- as the monthly income, considering the future prospects after deducting one-third, Rs.1,200/- can be taken as the loss of family contribution. The mother had completed 45 years at the time of accident as shown in the affidavit filed in this case. Therefore, 13 is the apt multiplier. If that be so, compensation payable for loss of dependency and family

contribution will be 12 x 12 x 13 = Rs.1,87,200/-. The Tribunal has fixed Rs.2,16,000/-. With regard to compensation on the other heads of pain and suffering etc., the Tribunal has granted Rs.21,000/-. That has to be added. Therefore, total compensation to be calculated is Rs.2,08,200/-. 25% of the above amount has to be deducted. Therefore, compensation payable will be only Rs.1,56,150/-. The above amount should be deposited by the appellant with interest and cost at the rates awarded by the Tribunal and it should be paid to the claimants in the same proportion as fixed by the Tribunal.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1095 OF 2002

JUDGMENT

15.11.2007